

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

TYRELL KNIGHT,	)	
	)	4:05cv3107
	)	
vs.	)	MEMORANDUM AND ORDER
	)	
RANDY CROSBY, et al.,	)	
	)	
Defendants.	)	

This matter is before the court on filing no. 17, the plaintiff's Motion to sue the remaining defendants in their individual and official capacities. The remaining defendants are Randy Crosby, a corrections officer in the segregation unit of the Nebraska State Penitentiary ("NSP") who, the plaintiff alleges, intentionally and cruelly torments him, and Governor Dave Heineman, who, according to the plaintiff, allows unconstitutional practices to take place in the State's prison facilities. I will direct the Clerk of Court to send the plaintiff the additional forms for service of process on the two defendants in their individual capacity, although I question the basis for a claim against Mr. Heineman in his individual capacity.<sup>1</sup>

IT IS THEREFORE ORDERED:

1. Filing no. 17 is granted, and the Clerk of Court shall send the plaintiff a copy of this order and two summons forms along with two Form-285s (one of each to be completed for service of process on each defendant in his individual capacity).
2. State employees in their *individual* capacity may be served wherever they can be found and will accept service of process themselves or through a person authorized to receive a summons on their behalf. If a defendant cannot be found or will not accept service, the plaintiff may file a motion for leave to serve that person by publication, and the court will give that option consideration.
3. The plaintiff shall, as soon as possible, send the completed summons and 285 forms back to the Clerk of Court. In the absence of the completed forms, service of process cannot occur.

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<sup>1</sup>However, the plaintiff has stated a claim on which relief may be granted against Mr. Crosby.

4. Upon receipt of the completed summons and 285 forms, the Clerk will sign each summons, to be forwarded, together with a copy of the complaint, to the U.S. Marshal for service of process. The Marshal shall serve each summons and complaint without payment of costs or fees. Service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal.

5. Fed. R. Civ. P. 4 requires service of the complaint on a defendant within 120 days of filing the complaint. However, on the court's own motion, the plaintiff shall have an extension of 30 days from the date of this order to complete and return the forms for service of process on the defendants in their individual capacity. Thereafter, the U.S. Marshal shall have 30 more days to serve the defendants.

DATED this 18<sup>th</sup> day of November, 2005.

BY THE COURT:

s/ F. A. GOSSETT  
United States Magistrate Judge

INSTRUCTIONS: SUMMONS FORMS AND FORMS 285  
for plaintiffs proceeding pro se and in forma pauperis

1. A summons form provides notice to a defendant that the defendant has been sued and must answer or otherwise respond to the complaint.
2. A form USM-285 ("form 285") provides directions to the U.S. Marshal as to whom to serve with process and where to serve the defendant(s). The U.S. Marshal serves the defendant(s) without cost to you because you are proceeding in forma pauperis ("IFP").
3. Do not copy your complaint to attach to the summons; the court will do that for you.
4. You may serve only defendant(s) named in the case caption of the complaint. If you want to serve additional defendant(s), you must move for leave to amend the complaint to add the additional defendant(s) to the case caption.
5. Be sure to print your case number on all forms.
6. You must give an address for the party to be served. The U.S. Marshal will not know a defendant's address.
7. Where a summons form states: "You are hereby summoned and required to serve on plaintiff's attorney" print your name and address.
8. Where a form 285 states: "send notice of service copy to requestor at name and address" print your name and address.
9. Where a form 285 calls for "signature of attorney or other originator" provide your signature and date the form.
10. Leave the last part of the summons form blank. The court will fill in the number of days in which the defendant must answer, and the court will sign and date the form.